

(1964) 11 PAT CK 0003
In the Patna High Court

Bajeshwar Singh		APPELLANT
	Vs	
Ram Bahadur Singh and Others		RESPONDENT

Date of Decision : 19-11-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195, 476
Penal Code, 1860 (IPC) — Section 109, 465, 471, 485

Citation : (1965) CriLJ 837

Hon'ble Judges : Kamla Sahai, J

Bench : Single Bench

Judgement

Kamla Sahai, J.—The petitioner filed a complaint before the Sub Divisional Magistrate of Monghyr Sadar. The case was numbered as 563-C of 1961. Opposite Party Ram Bahadur Singh, Indu Bhushan Singh and Vikramadityu Singh were named as accused in that case. The Sub-Divisional Magistrate took cognizance and transferred the case to Mr. Kamdeo Singh, Judicial Magistrate, for trial. The accused persons surrendered on the 8th June 1962, and were ordered to be released on bail of Rs. 500/- with two sureties of like amount each. The accused persons furnished bail bonds, and were released on bail on the same day.

2. The petitioner obtained certified copies of two of the bail bonds of the 21st September 1962. They showed that one of the sureties was Jamuna Singh who had also put his signature on them. On the 27th October 1962 the petitioner filed an application, alleging that the bail bonds had been forged because Jamuna Singh had died about ten years earlier, and praying for action against opposite party Ram Bahadur Singh and Indu Bhushan Singh. He filed a similar petition on the 14th November 1962. On the 26th November, 1962, he obtained copies of the same bail bonds, and found that, in the mean time, the signatures and, at places, the names of Jamuna Singh had been cancelled, and those of Shasht Bhushan Singh, son of Jamuna Singh, had been introduced. On the 28th November, 1962, he filed two petitions before the learned Magistrate. In one petition, he prayed that the three bail bonds executed by Ram Bahadur Singh, Indu Bhushan Singh and Vikramaditya Singh should be kept in safe custody as

they were forged, and some cuttings appeared on them. In the other petition, his prayer was for suitable action being taken, and complaint, as required by law, being filed against the accused opposite party. The learned Magistrate acceded to both prayers, and called upon the accused opposite party to show cause why action according to law, should not be taken against them. On the 1st December 1962, the learned Magistrate issued notice on the petitioner's application to opposite party Kartik Singh also to show cause why action should not be taken against him. It may be stated that he is a son of Jamuna Singh, and he signed as one of the sureties, Jamutia Singh being the other, on two of the bonds, i. e., the bonds executed by Indu Bhushan Singh and Ram Bahadur Singh.

3. The learned Magistrate, by his order dated the 5th April, 1963 decided to file a complaint against opposite party Ram Bahadur, Indu Bhushan and Bikramaditya under Sections 465 and 471 and against Kartik Singh under Sections 485/109 and 471/109 of the Penal Code. A complaint was, accordingly, filed. All members of the opposite party filed an appeal before the Sessions Judge of Monghyr who, by his order dated the 11th March 1964, has allowed the appeal, and has ordered the complaint filed by the Magistrate against the opposite party to be withdrawn. It is against this order that the petitioner has filed this application for revision.

4. The learned Sessions Judge has given several grounds in support of his decision. His first point is that, although a preliminary inquiry is not necessary u/s 476 of the Criminal P. C., the learned Magistrate ought to have held a preliminary inquiry in this case. It seems to me, however, that there is no reason why the learned Magistrate must have held an inquiry in this case. He heard the parties, and, on the materials before him, he came to the conclusion that this was a fit case in which a complaint should be filed. Whether or not it was necessary for him to hold a preliminary inquiry was a matter of his discretion, and I am unable to say in this case why he should be held to have exercised his discretion wrongly.

5. Another ground is that, due to the laches of the petitioner, the opposite party were unable to get copies of the bail bonds, and hence they were not in a position to show cause against the contemplated filing of a complaint against them. This is incorrect. I find from the order sheet of the Magistrate that the bail bonds were kept in a box under lock and key. When the opposite party applied for copies of the bail bonds he directed, by his order dated the 5th March 1963, that the complainant's lawyer should appear with the key of the box on the 14th March 1963, that the Copying Department should then receive the documents and that they should then prepare copies in presence of the complainant's lawyer. On the 14th March, the complainant's lawyer was present, and the Advocate for the opposite party was also present. On the application of the opposite party's lawyer the case was adjourned to the 20th March, when the complainant's lawyer was directed to be present with the key. On the 20th March also, the complainant's lawyer was present; but the opposite party were absent.

One lawyer on behalf of the opposite party was present; but no petition was filed on their behalf nor was any pairvi made. As it was late, the case was adjourned to the 21st March. On that date, the complainant filed hazri; but the opposite party were absent. The Magistrate then adjourned the case to the 3rd April 1963.

On the 22nd March 1963, Shri M. K. Sinha Advocate on behalf of the opposite party who has also signed the bail bonds, filed a petition, showing cause against his prosecution. He has stated in that petition that a man, who was identified to him by Shiva Shankar Singh and Ram Bahadur Singh as Jamuua Singh, signed the bail bonds, and that the initials upon the cuttings, which purport to have been made by him, have not really been made by him. On the 30th April 1963, the accused opposite party Bled a petition, stating that they could not file their show cause petition because they were unable to obtain copies of the documents alleged to be forged. It is clear from what I have stated that the opposite party were given plenty of opportunities to get certified copies of the bail bonds, but they did not avail of those opportunities. Indeed, the learned Sessions Judge himself has accepted in an order dated the 1st July, 1963, on an application for transfer filed by the accused opposite party that "several opportunities were given to the petitioners (opposite party here) for filing show cause; but the petitioners did not avail of this opportunity."

6. Another ground taken by the learned Sessions Judge is that the Magistrate has not recorded a finding that it is expedient in the interests of justice that a complaint should be filed against the opposite party. This is a case in which bail bonds are alleged to have been filed by the opposite party, showing a dead man to be one of the sureties. If accused persons get released on bail in which there is a dead person as surety, it may become very difficult to secure the appearance of the accused persons on dates fixed in the case. If, therefore, there is a prima facie case that forgery has been made in a bail bond, it would certainly be expedient in the interests of justice that a complaint should be filed.

7. The learned Sessions Judge has next stated that there is no material to show that Jamuna Singh died about ten years ago. The fact that Jamuna Singh died a longtime ago has never been disputed even by the opposite party. Besides, there are several materials which show that Kartik himself stated that his father, Jamuna Singh was dead.

8. The grounds given by the Sessions Judge are not, therefore, good grounds for withdrawing the complaint.

9. Appearing on behalf of the opposite party, Mr. Sree Narayan Sahay has urged that there is no prima facie case against them. I am unable to accept this argument. The first certified copies of two of the bail bonds obtained by the petitioner show Jamuna Singh's names and his signatures. The second certified copies obtained by him show that the signatures and, at places, the names of Jamuna Singh had been cancelled, and that of Shashi Bhusban Singh had been introduced. Mr. Sree Narayan Sahay says that the petitioner wangled in the

Copying Department, and that the copies first obtained by the petitioner are fictitious. This is a matter which has to be thrashed out in Court. It is impossible for me to say one way or the other. I have seen the original bonds. The cuttings are perfectly clear. If the cuttings were made before the bonds were accepted, there would be no offence. If they were made after the bonds were accepted, as the certified copies obtained by the petitioner tend to show, it is clear that some one forged the signatures of Jamuna Singh who was long dead.

10. Another argument which has been advanced by Mr. Sree Narayan Sahay is that the accused opposite party cannot be made liable for any offence because they were in jail at the time when the bonds were furnished. This argument has no basis. The order of the learned Magistrate dated the 8th June 1962, shows that the accused opposite party surrendered, and they were ordered immediately to be released on bill of Rs. 500/. with two sureties of like amount each. The same order further shows that the opposite party furnished bail bonds with two sureties. The bail bonds were accepted, and they were released. If, therefore, the bail bonds are forged those who executed them and filed them in Court must be held to have fraudulently or dishonestly used the bail bonds as genuine and they will thus be liable u/s 471 of the Penal Code.

11. Learned Counsel has also submitted that Kartik who was a mere bailor, was not a party to the proceeding, and that the learned Magistrate has wrongly filed a complaint against him. It is true that he is not a party; but the entire transaction is one. Mr. Sree Narayan Sahay has drawn my attention to a decision of this Court in Lala Mathur Prasad Vs. Pitambar Singh, . In that case, a complaint was filed against a pleader who was not a party to a suit. Their Lordships held that Section 195(1) must be read together with Section 476, and that a complaint could not, therefore, be filed against a person who was not a party to the suit. Das J. has, however, said at the end of his judgment

In the present case, it is not -quite necessary to decide if a complaint can be made against persons, other than parties to any proceeding, when once the Court has jurisdiction to make an inquiry in respect of a person who is a party to a proceeding.

In this case, there can be no doubt that no Court could take cognizance of the case against the accused opposite party, in view of Section 195(1)(c) without a complaint by the Court concerned, The learned Magistrate had, therefore, jurisdiction to proceed u/s 476 in respect of those members of the opposite party. The (acts alleged make out a case not only against them but also against Kattik Singh.

Though Section 195(1)(c) provides a bar against taking cognizance of an offence mentioned in that cause only in so far as a party to the proceeding in question is concerned, Section 476 covers cases both under Clauses (b) and (c) of Section 195(1), audit does not pro. vide that the complaint should be filed only against a party. Though it is true that usually the Court 11 not concern itself about finding

out whether a person other than a party to a proceeding before it has prima facie committed or not committed an offence, and will, therefore, not file a complaint against such a stringer, there is no reason why the Court, while properly and legally deciding the question of filing a complaint against a party to a proceeding before it, should not file a complaint also against a person who is alleged to have committed an offence along with the parties to the proceeding in the course of the same transaction. The only result of such a procedure will be that the court will file a complaint against the person or persons who were parties to the proceeding before it, and it will have to be left to the aggrieved person himself to file a complaint against the person who was a party to the commission of the offence, though not a party in the proceeding. The two cases will then have to be amalgamated, for otherwise it will cause harassment to all parties to hold two trials. This will merely cause inconvenience, and will not be of any benefit to any one.

12. For the reasons given above, I allow the application, and set aside the order of the learned Sessions judge. The learned Magistrate's order is restored. The trial of the case on the complaint filed by him will now proceed in accordance with law.

13. At the trial, no observation which I have made in the course of this order will be used either against one party or the other. I have made any observations on the materials before me, and the trial Court will necessarily have to proceed upon the evidence which is adduced before it.